



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Application of: **Tomoaki HOSHINO**

Group Art Unit: **1646**

Serial Number: **10/786,016**

Examiner: **Dong Jiang**

Filed: **February 26, 2004**

Confirmation Number: **3540**

For: **REMEDIES FOR INTERSTITIAL PNEUMONIA, METHOD OF
PREPARING ANIMAL MODEL OF SAID DISEASE, AND
SCREENING METHOD USING THE SAME**

Attorney Docket Number: **021310A**

Customer Number: **38834**

RESPONSE TO RESTRICTION/ELECTION REQUIREMENT

Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

March 22, 2007

Sir:

This paper is filed in response to the Office Action dated December 15, 2007. A petition for a first-month extension of the time period for response is submitted with this paper.

In the Office Action, Applicant is required to elect among the following species:

- Group (I), claim 24, 32-39, and 40 in part, IL-18 inhibitor is a monoclonal antibody for IL-18
- Group (II), claims 24, 32-39 and 40 in part, IL-18 inhibitor is a monoclonal antibody for IL-18 receptor
- Group (III), claim 24, 32-39, 41, and 49 in part, IL-18 inhibitor is a substance inhibiting conversion of a precursor of IL-18 into an activated one
- Group (IV), claims 24, 32-39, 42, and 49 in part, IL-18 inhibitor is an inhibitor is an inhibitor of cysteine protease
- Group (V), claims 24, 32-39, 43, and 49 in part, IL-18 inhibitor is an IL-1 β converting enzyme inhibitor
- Group (VI), claim 24, 32-39, 44, and 49 in part, IL-18 inhibitor is an IL-18BP
- Group (VII), claims 24, 32-39, 45 in part, 46, and 50 in part, IL-2 inhibitor is a monoclonal antibody for IL-2

- Group (VIII), claims 24, 32-39, 45 in part, 48, and 50 in part, IL-2 inhibitor is a monoclonal antibody for IL-2 receptor
- Group (IX), claims 24, 32-39, 47, and 50 in part, IL-2 inhibitor is an IL-2-diphtheria toxin conjugate

Applicant hereby elects the subject matter of **Group II, claims 24, 32-39, and 40** for prosecution in this application. This election is made **with traverse** as set forth below.

Namely, the election is made with traverse in-so-far as it is considered a restriction requirement and not an election of species requirement.

It is submitted that regarding Markush-type claims, “[i]t is considered improper to refuse to examine that which applicants regard as their invention, unless the subject matter in a claim lacks unity of invention” (MPEP 803.2). Further, “[b]roadly, unity of invention exists where compounds included within a Markush group (1) share a common utility, and (2) share a substantial structural feature essential to that utility” (Id.)

Here, the claims are analogous to Markush claims since claim 24 recites “at least one of an interleukin 18 inhibitor and/or an interleukin 2 inhibitor” and claim 34 recites “at least one of an isolated, purified, or non-naturally occurring interleukin 18 inhibitor and/or an isolated, purified, or non-naturally occurring interleukin 2 inhibitor.”

Further, the species recited in these claims and the dependent claims share both a common utility and substantial structural feature essential to that utility.

In addition, it is submitted that no prima facie showing of a serious burden on the Examiner has been made in the form of “an appropriate explanation of separate classification, or separate status in the art, or a different field of search” (MPEP 803.II). In particular, such a prima

Amendment
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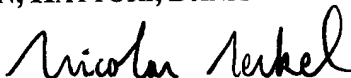
facie showing of a serious burden is lacking in particular with respect to Groups I-III, more particularly to Groups I and II for which the purported classification is the same (class 424, subclass 141.1). Therefore, any restriction requirement among Groups I-IX, more particularly among Groups I-III, even more particularly among Groups I-II, is improper. See MPEP 803.

If there is, in the Examiner's opinion, any outstanding issue and such issue may be resolved by means of a telephone interview, the Examiner is respectfully requested to contact the undersigned attorney at the telephone number listed below.

If this paper is not considered to be timely filed, the Applicants hereby petition for an appropriate extension of the response period. Please charge the fee for such extension and any other fees which may be required to Deposit Account No. 50-2866.

Respectfully submitted,

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